ASSOCIATION OF BANK OFFICERS, PENINSULAR MALAYSIA

v.

MENTERI SUMBER MANUSIA MALAYSIA & ORS

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: W-01-186 OF 1995]
22 NOVEMBER 1996

LABOUR LAW: *Trade union - Right to represent internal Officers in commercial banks - Dispute - Reference to Director General of Industrial Relations - Whether trade unions lacked locus standi to make representation - Whether Director General had jurisdiction to entertain reference - Whether Minister lacked threshold jurisdiction to entertain notificiation - Whether certiorari to issue against order of Minister - Industrial Relations Act 1967, s. 9(1A), (4C), (5)*

The appellant and the third respondent in this case are trade unions whose membership is open to certain class of officers working in commercial banks in Peninsular Malaysia. The second respondent, Perwira Affin Bank, is a commercial bank in Peninsular Malaysia. In June 1990, the second respondent had upgraded its "Tellers" and "Receptionists" to the executive category known as "Internal Officers". The upgrading exercise had resulted in a dispute between the appellant and the third respondent where each claimed to have a superior right to represent the Internal Officers. The appellant subsequently made a representation to the Director General of Industrial Relations ('the DG') under s. 9(1A) Industrial Relations Act 1967 ('the 1967 Act') requesting in effect that recognition be given to them to represent the Internal Officers. The DG, acting apparently under s. 9(4C) of the 1967 Act, then notified the first respondent, the Minister of Manpower, who in turn made an order under s. 9(5) thereof. The appellant, dissatified with the Minister's order, applied for *certiorari* and *mandamus* against the order. The application was refused by the High Court whereupon the appellant appealed.

Held:
Per Shaik Daud Ismail JCA

[1] From the tenor of s. 9(1A) of the 1967 Act, it seems clear that for any party mentioned therein to have recourse to that section, the condition precedent is that a dispute had arisen as to whether any workman or workmen are employed in a managerial, executive, confidential or security

capacity. The dispute envisaged in that section must necessarily be between the employees and the bank. There was no evidence of such dispute here, as the dispute seemingly is between two trade unions ie, the appellant and the third respondent.

[2] Since no dispute had arisen between the second respondent and those of its employees that were affected by the upgrading exercise, there could not have been recourse to s. 9(1A) and no representation ought to have been referred to the DG, and the DG therefore had no jurisdiction to entertain the so called representation from either the appellant or the third respondent.

[3] Since the appellant and the third respondent have no *locus standi* to refer the matter to the DG under s. 9(1A), and since the DG has no jurisdiction to entertain the reference or to notify the first respondent under s. 9(4C), it follows that the first respondent had no threshold jurisdiction to entertain such a notification under s. 9(5).

[Appeal allowed. Certiorari to issue but application for mandamus rejected.]

*[**Bahasa Malaysia** Translation of Headnotes]*

PERHUBUNGAN PERUSAHAAN: *Kesatuan sekerja - Hak untuk mewakili Pegawai-pegawai Dalaman di bank-bank komersial - Pertikaian - Rujukan kepada Ketua Pengarah Perhubungan Perusahaan - Samada kesatuan sekerja mempunyai locus standi untuk membuat representasi - Samada Ketua Pengarah tiada bidang kuasa untuk melayani rujukan - Samada Menteri tiada bidangkuasa puncak untuk melayani notifikasi - Samada certiorari patut dikeluarkan terhadap perintah Menteri - Akta Perhubungan Perusahaan 1967, ss. 9(1A), 9(4C), 9(5)*

Perayu dan responden ketiga dalam kes ini adalah dua kesatuan sekerja di mana keahlian bagi keduanya adalah terbuka kepada suatu gulungan pegawai-pegawai yang bekerja dengan bank-bank komersial di Semenanjung Malaysia. Responden kedua, Perwira Affin Bank, adalah sebuah bank komersial di Semenanjung Malaysia. Dalam bulan Jun 1990, responden kedua telah mempertingkatkan "Tellers" dan "Receptionists" nya ke kategori eksekutif yang dikenal sebagai "Pegawai-pegawai Dalaman". Pelaksanaan peningkatan ini telah menyebabkan berlakunya pertikaian di antara perayu dan responden ketiga di mana masing-masing merasa lebih berhak untuk mewakili Pegawai-pegawai Dalaman. Perayu kemudiannya membuat representasi kepada Ketua Pengarah Perhubungan Perusahaan ('KP') di bawah s. 9(1A) Akta Perhubungan Perusahaan 1967 ('Akta 1967') memohon bahawa mereka diberi pengiktirafan untuk mewakili Pegawai-pegawai Dalaman. Bertindak di bawah s. 9(4C) Akta

1967, KP telah memberi notifikasi kepada responden pertama, iaitu Menteri Sumber Manusia, yang berikutan itu membuat perintah di bawah s. 9(5) Akta yang sama. Perayu, berasa tidak puas hati dengan perintah Menteri, memohon untuk suatu perintah *certiorari* dan *mandamus* terhadap perintah tersebut. Permohonan perayu ditolak oleh Mahkamah Tinggi di mana perayu telah merayu.

Diputuskan:
Oleh Shaik Daud Ismail HMR:

[1] Dari saripati s. 9(1A) Akta 1967, ianya agak jelas bahawa untuk membolehkan pihak yang disebut di dalamnya itu merujuk kepada seksyen tersebut, pra-syarat yang perlu ada ialah mestilah wujud satu pertikaian tentang samada pekerja atau pekerja-pekerja yang berkenaan disara dalam perkhidmatan pengurusan, eksekutif, sulit atau pun keselamatan. Pertikaian yang dimaksudkan oleh seksyen ini semestinyalah di antara pekerja-pekerja dan bank. Tidak terdapat keterangan bahawa pertikaian sedemikian wujud di sini, kerana pertikaian yang wujud nampaknya adalah di antara dua kesatuan sekerja, iaitu perayu dan responden ketiga.

[2] Oleh kerana tiada pertikaian berbangkit di antara responden kedua dan pekerja-pekerjanya yang diakibatkan oleh pelaksanaan peningkatan tersebut, rujukan terhadap s. 9(1A) adalah tidak terbuka dan tiada representasi harus dibuat kepada KP, dan KP dengan itu tidak mempunyai bidangkuasa untuk melayani apa yang dikatakan sebagai representasi itu samada dari perayu atau pun responden ketiga.

[3] Oleh kerana perayu dan responden ketiga tidak mempunyai *locus standi* untuk merujuk kepada KP di bawah s. 9(1A), dan oleh kerana KP tiada bidangkuasa untuk melayani rujukan tersebut atau pun membuat notifikasi kepada responden pertama di bawah s. 9(4C), ianya mengikut bahawa responden pertama tidak mempunyai bidangkuasa puncak untuk melayani notifikasi tersebut di bawah s. 9(5).

[Rayuan dibenarkan. Certiorari dibenarkan tetapi permohonan untuk mandamus ditolak.]

Legislation referred to:
Industrial Relations Act 1967, s. 9(1A), (4C), (5)

[Appeal from High Court Malaya, Kuala Lumpur; Originating Motion No: R2-25-28-1995]

For the appellants - B Lobo; M/s Lobo & Assocs
For the 1st respondent - Haliza Aini Othman; M/s Genga, Maha, Wong & Co
For the 2nd respondent - S Nantha Balan; M/s Genga, Maha, Wong & Co
For the 3d respondent - T Mahalingam; M/s Genga, Maha, Wong & Co

JUDGMENT

Shaik Daud Ismail JCA:

This appeal is against the decision of the High Court which had, on 20 November 1995 refused an application for the issue of *certiorari* against an order made by the Minister of Manpower Malaysia on 16 February 1995. The High Court had also refused an application to issue an order of *mandamus* against the said Minister to exercise his statutory public duty under s. 9 of the Industrial Relations Act 1967 ('the 1967 Act').

The appellant herein is a trade union whose membership is open to all Class II officers and internal officers in the executive category, in commercials banks in Peninsular Malaysia. The 2nd respondent is a commercial bank whilst the 3rd respondent is also a trade union whose membership is open to all workmen other than those employed in a managerial, executive, confidential or security capacity in commercial banks in Peninsular Malaysia.

On or about 1 June 1990, the 2nd respondent had upgraded/promoted "tellers" and "receptionists" to the executive category known as "internal officers". As a result of this exercise, a majority of these internal officers became eligible to be members of the appellant, and eligible to be covered by the scope of the collective agreement/award between the appellant and the 2nd respondent. Before the exercise, these tellers and receptionists were eligible to be members of the 3rd respondent.

As a result of the exercise, a representation as to the recognition and scope of representation over the internal officers, was made to the Director-General of Industrial Relations (DG) under s. 9(1A) of the 1967 Act. As to which party made the representation to the DG does not seem to be clear at first. The appellant contend that it was the 3rd respondent which made the representation but on our perusal of the records, it would appear that the DG acted upon a letter dated 17 August 1994, sent by the appellant to him. The DG in reply to that letter enquired from the appellant as to why they thought that the internal officers ought to be represented by them. From this it would seem that it was the appellant which had made the representation to the DG.

Now s. 9(1A) of the 1967 Act provides:

> Any dispute arising at any time, whether before or after recognition has been awarded, as to whether any workman or workmen are employed in a managerial, executive, confidential or security capacity may be referred to the Director-General by a trade union of workmen or by an employer or by a trade union of the employers.

From the above provisions, it seems clear that in order for any party mentioned therein to have recourse to s. 9(1A), the condition precedent is that a dispute had arisen as to whether any workman or workmen are employed in a managerial, executive, confidential or security capacity. From our perusal of the records, at all material times there was no evidence of any such dispute. The dispute envisaged in that section must necessarily be between the employees and the bank. What seems to be a dispute here is between two trade unions, the appellant and the 3rd respondent, each claiming to have a superior right to represent the internal officers.

We stress again that no dispute had arisen between the 2nd respondent and those of its employees that were affected by the upgrading/promotion exercise and as such there could not have been recourse to s. 9(1A) of the 1967 Act and no representation ought to have been referred to the DG under these circumstances, the DG, therefore, had no jurisdiction to entertain the so called representation from either the appellant or the 3rd respondent. We are of the view that both, the appellant and the 3rd respondent, have no *locus standi* to refer the matter to the DG under s. 9(1A). Flowing from that, the DG has no jurisdiction to entertain the reference and in turn to notify the 1st respondent, the Minister, under s. 9(4C). In the light of this we hold that the 1st respondent had no threshold jurisdiction to entertain such a notification under s. 9(5).

We, therefore, allowed the appeal, issued *certiorari* to quash the decision of the 1st respondent. The application for *mandamus* was however rejected. We declined to order costs to the appellant for reasons stated earlier, that it was the appellant which made the representation to the DG in the first place. Accordingly the deposit must be refunded to the appellant.

Reported by WA Sharif